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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,076	10/29/2003	You Lung Chen	25040-1100	5940

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SUTHERLAND ASBILL & BRENNAN LLP
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EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary	Application No. 10/696,076	Applicant(s) CHEN ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-61 and 65-74 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-61 and 65-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The rejection of the claims under 35 USC 102 has been withdrawn in response to applicants' amendments to the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-45, 47 and 65-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jabara (AU 32375/97).

Jabara discloses an edible composition at example 6 that contains starch, orange flavor and colorant, mineral salts, ascorbic acid, bicarbonate and powdered sugar. Ascorbic acid is the acid used in this product. The application step requiring heat is a process limitation; carry no weight in product claims. On page 7, lines 15-22 the edible composition is cited to contain 0.5 to 80% binder and 0.5 and 99.9% flavor. Sweetener is also contemplated. Although citric acid is not mentioned in the patent, it is well known in the art that citrus fruits are well known to be acidified with organic acids (see Braverman at pages 106 and 107). Further the sour taste of fruits is known to originate from edible acids (Braverman, page 111, second full paragraph). Although Jabara does not mention the use of an edible

acid as a flavor, it would have been obvious to expect sour taste to be a component of the flavor.

The claims appear to differ from Jabara in the recitation of the use of the specific amount of acid of claim 38 and in the recitation of the concentration of ingredients per straw. But to vary the acid and the acid concentration would have been up to the skilled flavorist who desires to create a beverage with a sour taste.

Claims 38-62 & 65-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiorelli (3,824,322) for reasons of record and further in view of Braverman.

Applicant argues that Fiorella teaches away from flavor coated drinking straws and points to column 1, lines 56-69. This has been considered but is not persuasive because the text at column 1 refers to the prior art and not to the Fiorelli invention. Applicant's reference to crimping and perforations are related to the coated article and not to the composition that is in the claims.

Applicant argues that Fiorelli does not contemplate a composition with the high acid content of the claims. This has been considered but is not persuasive. At column 6, lines 50-56, the flavoring is described as

ranging from 20-70%. It is well known in the art that citrus fruits are well known to be acidified with organic acids (see Braverman at pages 106 and 107). Further the sour taste of fruits is known to originate from edible acids (Braverman, page 111, second full paragraph). Although Fiorelli does not mention the use of an edible acid as a flavor, it would have been obvious to expect sour taste to be a component of the flavor, according to the extent of sour taste that is desired. Applicant urges that the composition in Fiorelli is different from that of the claims. This has been considered but is not persuasive. To use an artificial sweetener in place of sucrose or corn syrup in Fiorelli would necessarily increase the percent edible acid in the coating composition. Applicant basically urges that Fiorella is a plastic structure and not a straw. No difference is seen between the hollow tube of Fiorella a straw because a straw is also a hollow tube.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. .

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CAROLYN PADÉN 1-18-07
PRIMARY EXAMINER 1761